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there being nothing in Code 1904, § 1105f, subsec. 27 as amended by Acts 1906, c. 257, providing that if, in a condemnation proceeding, the amount ascertained by the commissioners be not paid either to the party entitled or into court within three months from the filing of the report, the proceedings shall, on defendant's motion, be vacated as to him, and not otherwise, to show that it was intended to have a retroactive effect, it cannot be deemed to have such effect.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 451; Dec. Dig. § 167.* 12 Va.-W. Va. Enc. Dig. 773 et seq.; also, 14 Id. 954.]

7. Eminent Domain (§ 255*)—Writ of Error—Necessity for Objections in Lower Court.—Where no objection was made in the lower court in condemnation proceedings that the commissioners' report was not in accord with the order appointing them, the question cannot be raised on writ of error.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 666; Dec. Dig. § 253.* 1 Va.-W. Va. Enc. Dig. 547, et seq.; also, 14 Id. 87, et seq.]

Error to Circuit Court, Norfolk County.

Condemnation proceedings by the Norfolk & Ocean View Railway Company against the Consolidated Turnpike Company and others. From an order allowing compensation for the land taken, including the value of improvements placed thereon, and directing plaintiff to deposit the same, plaintiff brings error. Reversed and remanded.

Groner & Taylor and *Munford, Hunton, Williams & Anderson*, for plaintiff in error.

N. T. Green and *C. H. Burr*, for defendants in error.

COMMONWEALTH ex rel. NORTON BOARD OF TRADE, INC.,
v. NORFOLK & W. RY. CO. et al.

June 9, 1910.

[68 S. E. 351.]

1. Railroads (§ 9*)—Regulation—Corporation Commission—Powers.—Const. § 156b (Code 1904, p. cclii), provides that the Corporation Commission shall have power to supervise and control all transportation companies doing business in the state in all matters relating to their public duties, correct abuses therein, and prescribe and enforce rates and rules and regulations, and shall require the establishment and maintenance of all such public service and conveniences as may be reasonable and just, etc. Held, that the power imposed on the commission referred to matters relating to the performance of

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

public duties, and had no application to particular acts not based on a duty imposed.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 13; Dec. Dig. § 9.* 3 Va.-W. Va. Enc. Dig. 522, et seq.; also, 14 Id. 256.]

2. Carriers (§ 2*)—Regulation—Union Depot Facilities.—Code 1904, § 7294c (4), provides that transportation companies shall afford reasonable facilities for the interchange of traffic between their respective lines, and for the forwarding and delivery of passengers and property to and from their several lines without discrimination, but that the section shall not require any such company to give the use of its track or terminal facilities to another company engaged in like business. Section 1313a (16) provides that the Corporation Commission shall have authority to require all corporations doing business within the state to discharge any public duty imposed on such corporations by the Constitution or by law. Held, that section 1313a (16) did not define or create any public duty to be performed by transportation companies, and did not, therefore, modify or restrict the operation of section 1294c (4), under which the Corporation Commission had no authority to compel railroads owning and operating a joint depot in a town to permit the use of such depot and its terminal tracks by another railroad company.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 4, 5; Dec. Dig. § 2.* 2 Va.-W. Va. Enc. Dig. 675; also, 14 Id. 863.]

3. Carriers (§ 15*)—Terminal Facilities—Union Depot.—Const. § 166 (Code 1904, p. cclxi), declaring that all railroad companies whose lines connect shall receive and transfer each other's passengers, freight, and loaded or empty cars without delay or discrimination, does not require railroads maintaining and using a union depot to permit its use by another railroad.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 25-27; Dec. Dig. § 15.* 2 Va.-W. Va. Enc. Dig. 675; also, 14 Id. 863.]

4. Eminent Domain (§ 47*)—Use of Union Depot—Condemnation of Right.—Since the exercise of the power of eminent domain is against common right and cannot be implied or inferred, there being no provision in the Virginia law for the ascertainment of the compensation payable to railroad companies owning a union depot by another railroad company desiring to use the same, such right cannot be obtained by condemnation.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 107, 111; Dec. Dig. § 47.* 5 Va.-W. Va. Enc. Dig. 73, et seq.; also, 14 Id. 385.]

Appeal from Corporation Commission.

Petition by the Commonwealth, on relation of the Norton Board of Trade, Incorporated, against the Norfolk & Western

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

Railway Company, to compel the Norfolk & Western Railway Company and the Louisville & Nashville Railroad Company to permit the Interstate Railroad Company to use their common depot in the town of Norton. From an order of the Corporation Commission denying such relief, petitioner appeals. Affirmed, on the opinion of the chairman of the commission.

Irvine & Morrison, for appellant.

L. H. Cocke, C. T. Duncan, H. L. Stone, and A. E. Brandeis, for appellees.

COPPERTHITE *v.* LOUDOUN NAT BANK et al.

June 9, 1910.

[68 S. E. 392.]

1. Evidence (§ 76*)—Failure to Testify—Presumptions.—When defendant can by his own testimony throw light upon matters necessary to his defense and peculiarly within his own knowledge if the fact exists and he fails to testify, the presumption is raised that the facts do not exist.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 96; Dec. Dig. § 76.* 11 Va.-W. Va. Enc. Dig. 328, et seq.; also, 14 Id. 839, et seq.]

2. Trial (§ 105*)—Failure of Defendant to Testify—Written Statement—Probative Effect.—Where a defendant had failed to testify, but voluntarily furnished counsel for plaintiffs with a signed statement of his version of the transaction, which was filed in the case, it was entitled to its natural probative effect.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 260-266; Dec. Dig. § 105* 5 Va.-W. Va. Enc. Dig. 320.]

3. Fraudulent Conveyances (§ 158*)—Notice of Fraud—Actual Notice—Bona Fide Purchaser.—One purchasing with a knowledge of facts sufficient to put a prudent man on inquiry, or to lead one of ordinary perception to infer fraud, has notice, equivalent to actual knowledge in contemplation of law, and cannot be deemed a bona fide purchaser.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. §§ 500-503; Dec. Dig. § 158.* 6 Va.-W. Va. Enc. Dig. 628, et seq.; also, 14 Id. 491.]

Appeal from Circuit Court, Loudoun County.

Suit by the Loudoun National Bank and others against Henry.

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